

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



MARCEL BROOKS,

Petitioner,

v.

21-CV-290 (JLS) (MJR)

JOHNSON, Supt.,

Respondent.

DECISION AND ORDER

Pro se petitioner Marcel Brooks commenced this proceeding in February 2021,¹ when he filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. Dkt. 1. The petition challenges Brooks's 2017 conviction for assault in the first degree on three grounds. *See id.* at 16–17. Respondent answered, and filed a memorandum in opposition to, the petition on June 22, 2021. Dkt. 8; Dkt. 9.

This Court then referred this proceeding to United States Magistrate Judge Michael J. Roemer for all relevant proceedings, pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C). Dkt. 10.

On September 5, 2024, Judge Roemer issued a Report and Recommendation (“R&R”), recommending that this Court: (1) deny Brooks's petition on each of the three grounds asserted; and (2) deny Brooks a certificate of appealability. Dkt. 16.

¹ Brooks certified that he placed the petition into prison mailing system on February 8, 2021. *See* Dkt. 1, at 15.

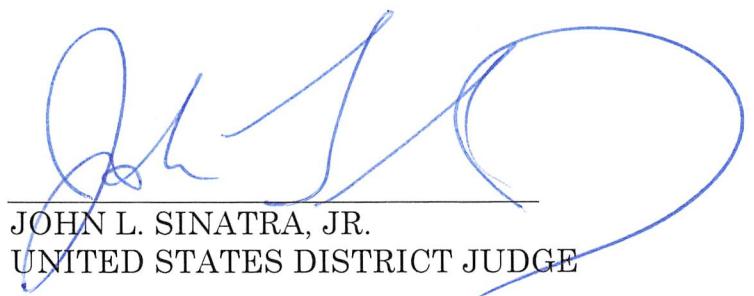
No party objected—despite being advised that they may do so—and the time to object has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *see also* Dkt. 16, at 18–19 (setting forth the requirements and time limits for objections).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Based on the absence of any objections, and after a review of the R&R and the relevant record, the Court accepts and adopt Judge Roemer’s recommendations. Brooks’s petition (Dkt. 1) is DENIED and dismissed, in its entirety. Because Brooks has not made a “substantial showing of the denial of a constitutional right,” no certificate of appealability will issue. *See* 28 U.S.C. § 2253(c)(2). The Clerk of Court shall mail a copy of this decision and order to Brooks at his address of record and close this case.

SO ORDERED.

Dated: October 17, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE